

Congress of the United States
Washington, DC 20515

January 9, 2003

The Honorable Donald Evans
Secretary
Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Mr. Secretary:

I am writing to request information related to a November 13 Department of Commerce press release which stated that your deputy, Under Secretary Kenneth Juster, will start negotiations in early 2003 to facilitate the sale of sophisticated technology to India. I have concerns about the suggestion in the press release that such an agreement could facilitate transfers of dual-use nuclear technology to India, as India has consistently failed to join the international nuclear non-proliferation regime. Additionally, given India's detonation of a nuclear device in 1998 and the subsequent removal of the sanctions imposed in response to this detonation after only two years, I am concerned that any new agreements could send the message that it pays to proliferate.

As you know, India has a long history of both seeking nuclear technology and refusing to sign international nonproliferation agreements:

- In 1948, India established an Atomic Energy Commission.
- Six years later, in 1954, India rejected safeguards and oversight of its nuclear sites by the new International Atomic Energy Agency (IAEA).
- In 1956, India, with U.S. and Canadian assistance, began construction of a civilian nuclear reactor.
- Two years later, India began construction of its own plutonium reprocessing plant, which gave India a dual-use facility that could lead to nuclear weapons.
- In 1963, India said it would not use plutonium from its civilian reactors for nuclear weapons.
- The Nuclear Nonproliferation Treaty (NPT) was completed in 1968; India refused—and has still refused—to sign.
- In 1974, India exploded a nuclear device.
- On September 10, 1996, India voted against the Comprehensive Test Ban Treaty (CTBT). The CTBT was adopted by an overwhelming majority, 158-3, with 5 abstentions.
- Two years later, in May 1998, India exploded six nuclear weapons.
- India remains one of only four countries to not have signed the NPT.

- A recent report to Congress by the Central Intelligence Agency stated, "The underground tests in May 1998 were a significant milestone in India's continuing nuclear weapons development program. Since the 1998 tests, New Delhi has continued efforts intended to lead to the development of more sophisticated nuclear weapons. During this reporting period, India continued to obtain foreign assistance for its civilian nuclear power program, primarily from Russia."

The 1998 Indian nuclear tests led to U.S.-imposed sanctions, including those required under Section 2(b)(4) of the Export-Import Bank Act, Sections 101 and 102 of the Arms Export Control Act (the Symington and Glenn Amendments), Section 701 of the International Financial Institutions Act. The impact of these sanctions included the termination of U.S. foreign assistance other than humanitarian or food assistance; termination of U.S. government sales of defense articles and services, design and construction services, licenses for exporting U.S. Munitions List items; termination of foreign military financing; U.S. opposition to loans or assistance from any international financial institution; prohibition of most U.S. bank-backed loans or credits; prohibition on licensing exports of "specific goods and technology"; and denial of credit or other Export-Import Bank support for exports to India. These sanctions have since been eased, even though India has not signed the NPT nor complied with its terms, to the point where export licenses reportedly are required for only four Indian entities.

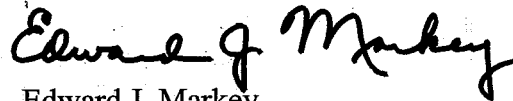
Given our nation's interest in preventing the proliferation of nuclear weapons, I do not believe that the United States should allow a nation that has thumbed its nose at the NPT to obtain access to dual-use technology. Therefore, I request a clarification of precisely what, if any, nuclear-related technologies are under consideration for export to India pursuant to any agreements reached by Under Secretary Juster on behalf of the Department. Accordingly, I ask for your prompt responses to the following questions:

- Precisely what technology is under consideration for sale to India? Please provide a complete list of the 1) changes in regulations or applicable sanctions that will enable such an agreement to be signed, 2) technologies to which these changes will apply, 3) for each technology, the military or nuclear weapons purpose to which it could be applied and 4) other forms of technical assistance (including but not limited to scientific exchanges, for example) that were not previously allowed.
- Do you plan to lift the sanctions for the four remaining Indian entities? If so, why? If not, how will you ensure that technology shipped to other Indian end-users under the agreement is not simply transferred to a sanctioned entity, or that such entities are not otherwise afforded access to such technologies?
- What guarantees and safeguards will be in place to ensure India will not use this technology to further advance its nuclear weapons program? Please fully describe all such guarantees and safeguards.
- What actions will the United States take if India uses the U.S.-supplied technology to develop new nuclear weapons or transfer nuclear technologies to other parties?
- What materials cannot be sold to India, as a nuclear weapons state that has not signed the NPT, compared with Great Britain, a nuclear weapons state that has signed the NPT, or Spain, a non-nuclear weapons state that has signed the NPT?

- Please provide a complete copy of the nonproliferation analysis performed that led you to conclude that such an agreement would not pose a proliferation problem. If such an analysis is still under way, please indicate the expected completion date and provide a complete copy when the analysis is finalized. If such an analysis has not been or will not be performed, why not?
- Please provide a complete copy of the legal analysis performed that led you to conclude that this new agreement was consistent with U.S. law and international agreements to which the U.S. is a party, including those listed above.
- Are you planning a similar agreement to provide technology or technical assistance to Pakistan? If so, please fully describe such a program.

Thank you for your assistance and cooperation. I would appreciate your response by close of business on January 31, 2003. Please have your staff contact Dr. Benn Tannenbaum at (202) 225-2836 if you have any questions about this request.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is written in a cursive, flowing style.

Edward J. Markey
Member of Congress